

NCNB Leasing Corporation
Charlotte, NC 28255
Telephone 704 | 374-5269



14088
RECORDATION NO. _____ Filed 1425

JUN 30 1983 -3 40 PM

No. 3-180A058
Date JUN 30 1983
Fee \$ 50.00

June 27, 1983 INTERSTATE COMMERCE COMMISSION

ICC Washington, D. C

Ms. Mildred Lee
Interstate Commerce Commission
12th and Constitutional Avenue, N.W.
Room 2303
Washington, D. C. 20423

Dear Ms. Lee:

We request that the enclosed document be recorded pursuant to the provisions of Section 20C of the Interstate Commerce Act as follows:

Document: Schedule to Master Lease Agreement and attachments
Lessor: NCNB Leasing Corporation
One NCNB Plaza
Charlotte, North Carolina 28255
Lessee: Selox, Inc.
821 East 11th Street
Chattanooga, Tennessee 37401
Equipment: 1 Lox Cryogenic Vacuum Jacketed Rail Tank Car,
Serial Number 6543

Our check for the \$50.00 recordation fee is enclosed. Please return one copy of the document showing the recording date. A self-addressed, stamped envelope is also enclosed for your use.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Arthur W. Williams".

Arthur W. Williams
Vice President

AWW/da

Enclosures

RECORDED
JUN 30 1983
FEE OPERATIONS SR.

Interstate Commerce Commission
Washington, D.C. 20423

6/30/83

OFFICE OF THE SECRETARY

**Arthur W. Williams Vp.
NCNB Leasing Corp.
One NCNB Plaza
Charlotte, N.C. 28255**

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **6/30/83** at **3:40pm**, and assigned re-recording number(s). **14088**

Sincerely yours,

Agatha L. Mergenovich
**Agatha L. Mergenovich
Secretary**

Enclosure(s)

MASTER LEASE

THIS LEASE, made this 25th day of September, 1981, by and between NCNB Leasing Corporation, with its main office located at Charlotte, North Carolina, hereinafter called "lessor," and

Selox, Inc.
821 E. 11th Street
Chattanooga, Tennessee 37401

RECORDATION NO. 14088 FILE 1426

JUN 30 1983 -3 40 PM

hereinafter called "lessee",

INTERSTATE COMMERCE COMMISSION

WITNESSETH:

For and in consideration of the mutual covenants and promises hereinafter set forth, the parties hereto agree as follows:

1. **Lease.** Lessor hereby leases to lessee, and lessee hereby leases and hires from lessor, all machinery, equipment and other property described in (a) the schedule executed by the parties concurrently herewith or hereafter and made a part hereof, and (b) any schedule or schedules hereafter executed by the parties hereto and made a part hereof. All said machinery, equipment and other property described in all said schedules is hereinafter collectively called "equipment"; and all said schedules is hereinafter collectively called "schedule".

2. **Term.** The term of this lease respecting each item of equipment commences upon whichever of the following dates is earlier:

- (a) The date lessor confirms to the seller of said item of equipment the lessee's purchase order for said item or;
- (b) The date said item of equipment is delivered to lessee.

The term of this lease ends on the date designated in the schedule.

3. **Rent.** The rent for any and every item of equipment described in the schedule shall be the amount designated in the schedule. Lessee shall pay lessor said rent in advance, in the amounts and at the times set forth in the schedule, at the main office of lessor, in Charlotte, North Carolina, or to such other person and/or at such other place as lessor may from time to time designate in writing.

4. **Use.** Lessee shall cause equipment to be operated by competent employees only, and shall pay all expenses of operation and maintenance of the equipment. Lessee shall use the equipment in a careful and proper manner and shall comply with and conform to all national, state, municipal, police and other laws, ordinances and regulations in anywise relating to the possession, use or maintenance of the equipment. If at any time during the term hereof lessor supplies lessee with labels, plates or other markings, stating that the equipment is owned by lessor, lessee shall affix and keep the same upon a prominent place on the equipment.

5. **Lessee's Inspection; Conclusive Presumptions.** Lessee shall inspect the equipment within forty-eight (48) hours after receipt thereof. Unless lessee within said period of time gives written notice to lessor, specifying any defect in or other proper objection to the equipment, lessee agrees that it shall be conclusively presumed, as between lessor and lessee, that lessee has fully inspected and acknowledged that the equipment is in good condition and repair, and that lessee is satisfied with and has accepted the equipment in such good condition and repair.

6. **Lessor's Inspection.** The equipment shall be located on the premises shown in the schedule. Lessor shall at any and all times during business hours have the right to enter into and upon the premises where the equipment may be located for the purpose of inspecting the same or observing its use. Lessee shall give lessor immediate notice of any attachment or other judicial process affecting any item of equipment and shall, whenever requested by lessor, advise lessor of the exact location of the equipment.

7. **Alterations.** Without the prior written consent of lessor, lessee shall not make any alterations, additions or improvements to the equipment. All additions and improvements of whatsoever kind or nature made to the equipment shall belong to and become the property of lessor upon the expiration, or earlier termination, of this lease.

8. **Repairs.** Lessee, at its own cost and expense, shall keep the equipment in good repair, condition and working order and shall furnish any and all parts, mechanisms and devices required to keep the equipment in good mechanical and working order.

9. **Loss and Damage.** Lessee hereby assumes and shall bear the entire risk of loss and damage to the equipment from any and every cause whatsoever: No loss or damage to the equipment or any part thereof shall impair any obligation of lessee under this lease which shall continue in full force and effect.

10. **Surrender.** Upon the expiration or earlier termination of this lease, with respect to any item of equipment, lessee shall, upon demand by lessor, return the same to lessor in good repair, condition and working order, ordinary wear and tear resulting from proper use thereof alone excepted, in the following manner as may be specified by lessor:

- (a) By delivering such item of equipment at lessee's cost and expense to such place as lessor shall specify within the city or county in which the same was delivered to lessee or to which same was moved with the written consent of lessor; or
- (b) By loading such item of equipment at lessee's cost and expense on board such carrier as lessor shall specify and shipping the same, freight collect, to the destination designated by lessor.

11. **Insurance.** Lessee shall keep the equipment insured against all risks of loss or damage from every cause whatsoever for not less than the full replacement value thereof as determined by lessor; and shall carry public liability and property damage insurance covering the equipment. All said insurance shall be in form and amount and with companies approved by lessor, and shall be in the joint names of lessor and lessee. Lessee shall pay the premiums therefor and deliver said policies, or duplicates thereof, to lessor. Each insurer shall agree, by endorsement upon the policy or policies issued by it or by independent instrument furnished to lessor, that it will give lessor thirty (30) days written notice before the policy in question shall be altered or cancelled. The proceeds of such insurance, at the option of lessor, shall be applied (a) toward the replacement, restoration or repair of the equipment or (b) toward payment of the obligations of lessee hereunder. Lessee hereby appoints lessor as lessee's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks or drafts for, loss or damage under any said insurance policy.

12. **Taxes.** Lessee shall keep the equipment free and clear of all levies, liens and encumbrances and shall pay all license fees, registration fees, assessments, charges and taxes (municipal, state and federal) which may now or hereafter be imposed upon the ownership, leasing, renting, sale, possession or use of the equipment, excluding, however, all taxes on or measured by lessor's income.

13. **Lessor's Payment.** In case of failure of lessee to procure or maintain said insurance or to pay said fees, assessments, charges and taxes, all as hereinbefore specified, lessor shall have the right, but shall not be obligated, to effect such insurance, or pay said fees, assessments, charges and taxes, as the case may be. In that event, the cost thereof shall be repayable to lessor with the next installment of rent, and failure to repay the same shall carry with it the same consequence, including interest at the highest lawful contract rate per annum, as failure to pay any installment of rent.

14. **Warranties.** Lessor, not being the manufacturer of the equipment, nor manufacturer's agent, makes no warranty or representation, either express or implied, as to the fitness, quality, design, condition, capacity, suitability, merchantability or performance of the equipment or of the material or workmanship thereof, it being agreed that the equipment is leased "as is" and that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee at its sole risk and expense. Lessee accordingly agrees not to assert any claim whatsoever against the Lessor based thereon. Lessee further agrees, regardless of cause, not to assert any claim whatsoever against the Lessor for loss of anticipatory profits or consequential damages. No oral agreement, guaranty, promises, condition, representation or warranty shall be binding; all prior conversations, agreements or representations related hereto and/or to said equipment are integrated herein. No modification hereof shall be binding unless in writing signed by Lessor. Lessor is not responsible for any repairs, service or maintenance in the leased equipment or the operations thereof.

15. **Indemnity.** Lessee shall indemnify lessor against, and hold lessor harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorney's fees, arising out of, connected with, or resulting from the equipment, including without limitation the manufacture, selection, delivery, possession, use, operation or return of the equipment.

16. **Security.** As security for the prompt and full payment of the rent, and the faithful and timely performance of all provisions of this lease, and any extension or renewal thereof, on its part to be performed, lessee has pledged and deposited with lessor the amount set forth in the schedule. In the event any default shall be made in the performance of any of the covenants on the part of lessee herein con-

See reverse side for additional terms and conditions which are a part of this lease.

tained with respect to any item or items of equipment lessor shall have the right, but shall not be obligated, to apply said security to the curing of such default. Any such application by lessor shall not be a defense to any action by lessor arising out of said default; and, upon demand, lessee shall restore said security to the full amount set forth in the schedule. Upon the expiration, or earlier termination, of this lease, or any extension or renewal thereof, provided lessee has paid all of the rent herein called for and fully performed all of the other provisions of this lease on its part to be performed, lessor will return to lessee any then remaining balance of said security.

17. **Default.** If lessee with regard to any item or items of equipment fails to pay any rent or other amount herein provided within ten (10) days after the same is due and payable, or if lessee with regard to any item or items of equipment fails to observe, keep or perform any other provision of this lease required to be observed, kept or performed by lessee or if lessee shall default in payment or performance under any other lease, contract or note obligation owing to lessor, lessor shall have the right to exercise any one or more of the following remedies:

(a) To declare the entire amount of rent hereunder immediately due and payable as to any or all items of equipment, without notice or demand to lessee.

(b) To sue for and recover all rents, and other payments, then accrued or thereafter accruing, with respect to any or all items of equipment.

(c) To take possession of any or all items of equipment, without demand or notice, wherever same may be located, without any court order or other process of law. Lessee hereby waives any and all damages occasioned by such taking of possession. Any said taking of possession shall not constitute a termination of this lease as to any or all items of equipment unless lessor expressly so notifies lessee in writing.

(d) To terminate this lease as to any or all items of equipment.

(e) To pursue any other remedy at law or in equity.

Notwithstanding any said repossession, or any other action which lessor may take, lessee shall be and remain liable for the full performance of all obligations on the part of lessee to be performed under this lease.

All such remedies are cumulative, and may be exercised concurrently or separately.

Upon the occurrence of any event of default, lessor is authorized at any time, without notice or demand to set-off, appropriate and apply against any sums due hereunder any and all sums of money held by lessor for lessee (whether on deposit or otherwise) and any and all other goods, instruments, security and property of every nature held for lessee.

18. **Bankruptcy.** Neither this lease nor any interest therein is assignable or transferable by operation of law. If any proceeding under the Bankruptcy Act, as amended, is commenced by or against the lessee, or if the lessee is adjudged insolvent, or if the lessee makes any assignment for the benefit of his creditors, or if a writ of attachment or execution is levied on any item or items of the equipment and is not released or satisfied within ten (10) days thereafter, or if a receiver is appointed in any proceeding or action to which the lessee is a party with authority to take possession or control of any item or items of the equipment, lessor shall have and may exercise any one or more of the remedies set forth in paragraph 17 hereof; and this lease shall, at the option of lessor, without notice, immediately terminate and shall not be treated as an asset of lessee after the exercise of said option.

19. **Concurrent Remedies.** No right or remedy herein conferred upon or reserved to lessor is exclusive of any other right or remedy herein or by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

20. **Lessor's Expenses.** Lessee shall pay lessor all costs and expenses, including attorneys' fees, incurred by lessor in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions, or provisions hereof.

21. **Assignment.** Without the prior written consent of lessor, lessee shall not (a) assign, transfer, pledge or hypothecate this lease, the equipment or any part thereof, or any interest therein or (b) sublet or lend the equipment or any part thereof, or permit the equipment or any part thereof to be used by anyone other than lessee or lessee's employees. Consent to any of the foregoing prohibited acts applies only in the given instance; and is not a consent to any subsequent like act by lessee or any other person.

All rights of lessor hereunder may be assigned, pledged, mortgaged, transferred, or otherwise disposed of, either in whole or in part, without notice to lessee.

22. **Ownership.** The equipment is, and shall at all times be and remain, the sole and exclusive property of lessor; and the lessee shall have no right, title or interest therein or thereto except as expressly set forth in this lease.

23. **Personal Property.** The equipment is, and shall at all times be and remain, personal property notwithstanding that the equipment or any part thereof may now be, or hereafter become, in any manner affixed or attached to, or imbedded in, or permanently resting upon, real property or any building thereon, or attached in any manner to what is permanent as by means of cement, plaster, nails, bolts, screws or otherwise.

24. **Delinquency Fee.** Should lessee fail to pay any part of the rent herein reserved or any other sum required by lessee to be paid to lessor, within ten (10) days after the due date thereof, lessee shall pay unto the lessor a delinquency fee equal to five percent (5%) of the past due rental installment.

25. **Offset.** Lessee hereby waives any and all existing and future claims, and offsets, against any rent or other payments due hereunder; and agrees to pay the rent and other amounts hereunder regardless of any offset or claim which may be asserted by lessee or on its behalf.

26. **Non Waiver.** No covenant or condition of this lease can be waived except by the written consent of lessor. Forbearance or indulgence by lessor in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by lessee to which the same may apply, and until complete performance by lessee of said covenant or condition, lessor shall be entitled to invoke any remedy available to lessor under this lease or by law or in equity despite said forbearance or indulgence.

27. **Entire Agreement.** This instrument constitutes the entire agreement between lessor and lessee; is irrevocable and it shall not be amended, altered or changed except by a written agreement signed by the parties hereto.

28. **Notices.** Service of all notices under this agreement shall be sufficient if given personally or mailed to the party involved at its respective address hereinafter set forth, or at such address as such party may provide in writing from time to time. Any such notice mailed to such address shall be effective when deposited in the United States mail, duly addressed and with postage prepaid.

29. **Gender; Number.** Whenever the context of this lease requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural; and whenever the word "lessor" is used herein, it shall include all assignees of lessor. If there is more than one lessee named in this lease, the liability of each shall be joint and several.

30. **Titles.** The titles to the paragraphs of this lease are solely for the convenience of the parties, and are not an aid in the interpretation of the instrument.

31. **Time.** Time is of the essence of this lease and each and all of its provisions.

IN WITNESS WHEREOF the parties hereto have executed these presents the day and year first above written.

LESSOR:

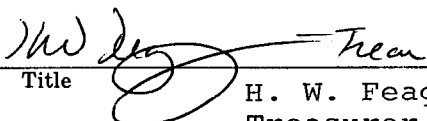
LESSEE:

NCNB LEASING CORPORATION

Selox, Inc.

Name of Lessee

By  VICE PRESIDENT

By  Title
H. W. Feagans, Jr.
Treasurer/Secretary

One NCNB Plaza, Charlotte, North Carolina

By _____ Title

Address 821 E. 11th Street
Chattanooga, TN 37401

THIS LEASE CANNOT BE CANCELLED

SCHEDULE TO MASTER LEASE

Schedule No. 9120198217

A. EQUIPMENT LEASED:

One - Cryogenic Vacuum Jacketed Rail Tank Car, Serial No. 6543
National Board No. 536
Manufactured by Lox Equipment Co.

B. TERM: Unless sooner terminated as set forth in the lease, the term of this lease respecting each item of equipment listed on this schedule expires on May 20, 1988

C. RENT: As rent for said equipment, lessee shall pay lessor the sum of \$164,340.00 Plus Any Taxes Except as otherwise provided in the lease or in this schedule said rent shall be payable in 60 Monthly installments, commencing on June 20, 1983 as follows:

Sixty (60) Successive Monthly Installments of \$2,739.00 Plus Any Taxes.

Unless sooner paid, all said rent shall be payable in any event on or before the expiration or sooner termination of this lease.

D. LOCATION: The above described equipment shall be located at on Railroad Trackage Within the United States of America and shall not be removed therefrom without the prior written consent of lessor.

E. DEPOSIT: \$ N/A, pursuant to paragraph 16 of the lease of which this schedule is a part.

F. SPECIAL CONDITIONS:

At the request of Lessor, Lessee shall provide Lessor with the exact location of the equipment. Upon loss or damage to the equipment, Lessee shall promptly pay Lessor the loss payment as calculated according to American Association of Railroads Field Manual of the Interchange Rule, as such may be amended from time to time.

APPROVED AND AGREED TO this 23rd day of June, 1983, as

a schedule to that certain lease dated the 25th day of September, 1981, by and between the parties hereto, and made a part hereof.

Lessor:

NCNB LEASING CORPORATION

By William W. Williams
Title Vice President

One NCNB Plaza, Charlotte, North Carolina 28255

Lessee:

Selox, Inc.

Name of Lessee

By H. W. Feagans, Jr.
Title Treasurer/Secretary

Lessee

(Seal) 821 E. 11th Street
Address Chattanooga, TN 37401

RESIDUAL GUARANTY

As an inducement to NCNB LEASING CORPORATION (hereinafter the "Lessor") to enter that certain Master Lease Agreement dated September 25, 1981, (hereinafter the "Master Lease"), and accompanying Schedule to Master Lease No. 9120198217 dated June 23, 1983, (hereinafter the "Schedule to Master Lease") with Selox, Inc.

hereinafter the "Lessee"), and in consideration thereof, the undersigned (hereinafter the "Guarantor") hereby absolutely and unconditionally guarantees to Lessor, its successors and assigns, that the undersigned will pay to the Lessor at the termination of the lease respecting the Equipment an amount equal to the agreed Residual Value of the Equipment, set out below, all rental payments required by the terms of the Schedule to Master Lease and not paid by the termination date, including future rental payments declared due and owing upon default by Lessee pursuant to paragraph 17 of the Master Lease, and all applicable taxes, fees, costs of collection, including but not limited to reasonable attorney's fees, charges or assessments due from Lessee pursuant to the terms of the Master Lease, Schedule to Master Lease, or any other agreement by and between Lessor and Lessee and not paid by the termination date, provided that if Lessor elects to sell the Equipment listed on the Schedule to Master Lease to a party other than the Guarantor, Lessee shall have set off against its obligation hereunder, the purchase price realized on such sale less the costs of the sale up to the Agreed Residual Value. The condition of the Equipment at the termination date shall not impair the undersigned's obligations under this Agreement.

The Agreed Residual Value for the Equipment listed on the Schedule to Master Lease is \$ 19,500.00 (Nineteen Thousand Five Hundred and No/100's).

"Termination" and "termination date", as those terms are used in the Agreement, shall mean the expiration date set out in paragraph B to the Schedule to Master Lease, or such earlier termination as provided for in paragraph 17 of the Master Lease.

This Agreement shall be construed in accordance with the laws of the State of North Carolina and shall be for the benefit of Lessor, its successors and assigns and bind the undersigned, its heirs, successors and assigns.

ATTEST:

By: [Signature]
Secretary
(Corporate Seal)

Selox, Inc.

Witness: [Signature]

By: [Signature]
H. W. Feagans, Jr.
Treasurer/Secretary

Witness: [Signature]

Title: Sec.

STATE OF Tennessee)
CITY OF Chattanooga) ss.
COUNTY OF Hamilton)

On this 23rd day of June, 1983, before me personally appeared
A. H. Feagans, Jr., to me personally known, whom, being
by me duly sworn, says that he is Secretary of Selox, Inc.
_____ that one of the seals affixed to
the foregoing instrument is the corporate seal of the said corporation and
that the said instrument was signed and sealed on behalf of said corporation
by authority of its Board of Directors and he acknowledged that the execution
of the foregoing instrument was the free act and deed of said corporation.

MY COMMISSION EXPIRES JULY 6, 1985

My commission expires:

William H. Seidman
(Notary Public)

(Notary Seal)



STATE OF North Carolina)
CITY OF Charlotte) ss.
COUNTY OF Mecklenburg)

On this 27th day of June, 1983, before me personally appeared
Arthur W. Williams, to me personally known, whom, being
by me duly sworn, says that he is Vice President of NCRB
Leasing Corporation that one of the seals affixed to
the foregoing instrument is the corporate seal of the said corporation and
that the said instrument was signed and sealed on behalf of said corporation
and he acknowledged that the execution of the foregoing instrument was the
free act and deed of said corporation.

My commission expires: July 5, 1987

Lance G. Caldwell
(Notary Public)

(Notary Seal)